

AN ACT

RELATING TO LICENSURE; PROVIDING FOR SEPARATE RULE
PROMULGATION FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL
SURVEYORS; EXPANDING POWERS AND DUTIES OF THE BOARD; CHANGING
QUORUM REQUIREMENTS; AMENDING LICENSURE REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-23-3 NMSA 1978 (being Laws 1987,
Chapter 336, Section 3, as amended) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and
Surveying Practice Act:

A. "approved" or "approval" means acceptable to
the board;

B. "board" means the state board of licensure for
professional engineers and professional surveyors;

C. "conviction" or "convicted" means any final
adjudication of guilt, whether pursuant to a plea of nolo
contendere or otherwise and whether or not the sentence is
deferred or suspended;

D. "engineer" means a person who is qualified to
practice engineering by reason of his intensive preparation
and knowledge in the use of mathematics, chemistry, physics
and engineering sciences, including the principles and methods
of engineering analysis and design acquired by professional
education and engineering experience;

E. "engineering", "practice of engineering" or "engineering practice" means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

F. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering, including the promulgation and adoption of rules of professional responsibility for professional engineers exclusive to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "fund" means the professional engineers' and surveyors' fund;

I. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

J. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

K. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

L. "professional engineer", "consulting engineer", HB 99
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"licensed engineer" or "registered engineer" means a person who is licensed by the board to practice the profession of engineering;

M. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

N. "surveying", "practice of surveying" or "surveying practice" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls that will be the basis for all geospatial data used for future design surveys, including construction staking surveys, surveys to lay out horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods, construction surveys of engineering and architectural public works projects; and

(5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

O. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying, including the promulgation and adoption of rules of professional responsibility for professional surveyors exclusive to the practice of surveying;

P. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

Q. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act;

R. "surveying work" means the work performed in the practice of surveying; and

S. "supplemental surveying work" means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system.

The board shall recognize that there may be occasions when professional engineers need to obtain supplemental survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services. "

Section 2. Section 61-23-5 NMSA 1978 (being Laws 1987, Chapter 336, Section 5, as amended) is amended to read:

"61-23-5. STATE BOARD OF LICENSURE FOR PROFESSIONAL

ENGINEERS AND PROFESSIONAL SURVEYORS--MEMBERS--TERMS.--

A. There is created the "state board of licensure for professional engineers and professional surveyors" that shall consist of five licensed professional engineers, at least one of whom shall be in engineering education, three licensed professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term,

if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term."

Section 3. Section 61-23-6 NMSA 1978 (being Laws 1987, Chapter 336, Section 6, as amended) is amended to read:

"61-23-6. BOARD MEMBERS--QUALIFICATIONS.--

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years as a professional engineer licensed in New Mexico, or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years, and shall be a professional engineer licensed in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years as a professional surveyor licensed in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico, shall not have been licensed nor be qualified for licensure as an engineer, surveyor, architect or landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated."

Section 4. Section 61-23-9 NMSA 1978 (being Laws 1987, Chapter 336, Section 9, as amended) is amended to read:

"61-23-9. BOARD--ORGANIZATION--MEETINGS.--

A. There shall be an "engineering committee" composed of the five members of the board who serve as licensed professional engineers and one of the public members, who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may be substituted for a non-attending member in order to have a quorum. The committee shall elect a chair and vice chair from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a "surveying committee" composed of the three members of the board who serve as licensed

professional surveyors and one of the public members, who shall be appointed to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or rules of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other board members may serve on this committee. The committee shall elect a chair and vice chair from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board. Committee actions shall be reported to the board.

D. There shall be a joint engineering and surveying standing committee of the board composed of two members from the professional engineering committee, the public member and the chair, and two members from the professional surveying committee, the public member and the chair. If the public member is currently the chair of either committee, the vice chair will serve as the professional member on the standing committee.

E. The board shall hold at least four regular

meetings each year. At least one meeting shall be held at the state capitol. The bylaws or rules of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chair, a vice chair and a secretary, who shall be members of the board. A member of the board shall not be elected to the same office for more than two consecutive years. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal."

Section 5. Section 61-23-10 NMSA 1978 (being Laws 1987, Chapter 336, Section 10, as amended) is amended to read:

"61-23-10. DUTIES AND POWERS OF THE BOARD.--

A. It shall be the duty of the board to administer the provisions of the Engineering and Surveying Practice Act and to exercise the authority granted the board in that act. The board is the sole state agency with the power to certify the qualifications of professional engineers and professional surveyors. The board is authorized to engage such personnel, including an executive director, as it may deem necessary.

B. The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of

its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

C. The professional engineering committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of engineering. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

D. The professional surveying committee shall adopt and promulgate rules of professional responsibility exclusive to the practice of surveying. All such bylaws and rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

E. The joint engineering and surveying standing committee shall have the exclusive authority over practice disputes between engineers and surveyors to determine if any proposed rules of professional responsibility are exclusive to the practice of engineering or exclusive to the practice of surveying so that rulemaking authority is delegated to the engineering committee or to the surveying committee.

Determination of exclusive practice of engineering or surveying requires an affirmative vote by no less than three members of the committee. If an affirmative vote of three members cannot be achieved, the determination of exclusivity shall be made by the full board.

F. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chair's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action against a licensee or a person practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If any person willfully fails to comply with such an order, that person may be held in contempt of court.

G. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under this proceeding.

H. The board may subject an applicant for licensure to such examinations as it deems necessary to

determine the applicant's qualifications.

I. The board shall create enforcement advisory committees composed of licensees as necessary. Each committee shall include at least four licensees in the same category as the respondent. An engineering enforcement advisory committee shall have at least one licensee in the same branch as the respondent. Enforcement advisory committees shall provide technical assistance to the board and its staff. The board shall select members from a list of volunteers submitting their resumes and letters of interest.

J. No action or other legal proceedings for damages shall be instituted against the board, any board member or an agent, an employee or a member of an advisory committee of the board for any act done in good faith and in the intended performance of any power or duty granted pursuant to the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

K. The board, in cooperation with the board of examiners for architects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development of the highest professional standards in

design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

L. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical rules of the board and the board of examiners for architects."

Section 6. Section 61-23-14 NMSA 1978 (being Laws 1993, Chapter 218, Section 11, as amended) is amended to read:

"61-23-14. CERTIFICATION AS AN ENGINEER INTERN--
REQUIREMENTS.--

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that the applicant:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a licensed professional engineer.

B. After acceptance of the application by the

board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that the applicant has:

(1) graduated from a board-approved, four-year engineering curriculum; or

(2) graduated from a board-approved, four-year engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification as engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering."

Section 7. Section 61-23-14.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 12, as amended) is amended to read:

"61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--
REQUIREMENTS.--

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application in which it shall be demonstrated that the

applicant:

(1) is of good moral character and reputation;

(2) has five references, three of whom shall be licensees practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonlicensed engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board; provided a satisfactory written explanation is given and the applicant meets one of the following requirements:

(a) is certified as an engineer intern and has at least four years of board-approved engineering experience after graduation from a board-approved engineering curriculum;

(b) is certified as an engineer intern, and has, including the two years for engineer intern certification, at least six years of board-approved engineering experience after graduation from a board-approved, four-year engineering technology curriculum accredited by the technical accreditation commission of the accreditation board for engineering and technology;

(c) has obtained a doctorate degree in

an engineering discipline recognized by the board and has a minimum of four years of board-approved engineering experience subsequent to the awarding of the degree;

(d) has obtained a master's degree in an engineering discipline recognized by the board from a board-approved program and has a minimum of six years of engineering experience subsequent to the awarding of the degree; or

(e) has graduated from a board-approved, four-year engineering curriculum and has a minimum of twelve years of engineering experience subsequent to the awarding of the degree.

B. An applicant shall be allowed to take the appropriate examination for licensure as a professional engineer as approved by the board.

C. Upon successfully completing the examination, required experience and all the requirements as noted in this section, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if the applicant:

(1) is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States, provided the licensure does not conflict with the provisions of the Engineering and

Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; or

(2) is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board competence in current engineering standards and procedures."

Section 8. Section 61-23-17 NMSA 1978 (being Laws 1987, Chapter 336, Section 17) is amended to read:

"61-23-17. APPLICATION AND EXAMINATION FEES.--

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, registration or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of the applicant's technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the

Engineering and Surveying Practice Act. No fees shall be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude."

Section 9. Section 61-23-20 NMSA 1978 (being Laws 1987, Chapter 336, Section 20, as amended) is amended to read:

"61-23-20. ENGINEERING--LICENSURE AND RENEWAL FEES-- EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional engineers. Licensure renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. Each licensee shall have the responsibility to notify the board of any change of address.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure

renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, the licensee shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired. The board may adopt rules for inactive and retired status."

Section 10. Section 61-23-24 NMSA 1978 (being Laws 1993, Chapter 218, Section 18, as amended) is amended to read:

"61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY ACTION--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or

revoke the certificate of licensure, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

(1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional engineer by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the

Engineering and Surveying Practice Act or the rules adopted by the board;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules of the board.

B. Except as provided in Subsection C of Section 61-23-21 NMSA 1978, nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered" or "engineering" so long as such words are not used in an offer to the public to perform engineering work as defined in Subsections E and L of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. Any person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against any

licensed professional engineer. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to civil or criminal suits, provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may

reissue a certificate of licensure to any person whose certificate has been revoked or suspended, providing a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of such reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

I. The professional engineering committee shall prepare and adopt rules of professional responsibility for professional engineers as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Publication and public notice shall be in accordance with the Uniform Licensing Act. The professional engineering committee may revise and amend the rules of professional responsibility for professional engineers from time to time and shall notify each licensee in writing of such revisions or amendments.

J. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

K. The attorney general or district attorney of

the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

L. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county where the violation occurs."

Section 11. Section 61-23-27.4 NMSA 1978 (being Laws 1993, Chapter 218, Section 25, as amended) is amended to read:

"61-23-27.4. LICENSURE AS A PROFESSIONAL SURVEYOR--
GENERAL REQUIREMENTS.--

A. Licensure as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application to demonstrate that the applicant:

(1) is of good moral character and reputation;

(2) is certified as a surveyor intern;

(3) has at least four years of board-approved surveying experience if graduated from a four-year, board-approved surveying curriculum or has a minimum of eight

years of board-approved surveying experience, including the four years of experience required for surveying intern certification, if graduated from a four-year, board-approved related science curriculum; and

(4) has five references, three of which shall be from licensed professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience pursuant to Paragraph (3) of Subsection A of this section shall, at a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a licensed professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be licensed if the applicant is currently licensed as a professional surveyor in:

(1) the District of Columbia, another state, a territory or a possession of the United States, provided that:

(a) licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; and

(b) the applicant has passed examinations the board deems necessary to determine the applicant's qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act; and

(b) competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico."

Section 12. Section 61-23-27.7 NMSA 1978 (being Laws 1993, Chapter 218, Section 28, as amended) is amended to read: HB 99

"61-23-27.7. SURVEYING--LICENSURE AND RENEWAL FEES--
EXPIRATIONS.--

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. Initial certificates of licensure shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional surveyors. Renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the license.

D. It shall be the responsibility of the licensee to notify the board of any change of address and to maintain the certificate of licensure current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional surveyor for the biennial period.

F. Every certificate of licensure shall

automatically expire if not renewed on or before the last day of the biennial period. A licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent licensee may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the licensee wish to renew an expired certificate after the twelve-month period has elapsed, the licensee shall submit a formal application as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired."

Section 13. Section 61-23-27.9 NMSA 1978 (being Laws 1993, Chapter 218, Section 30, as amended) is amended to read:

"61-23-27.9. SURVEYING--PRACTICE OF SURVEYING--
MANDATORY DISCLOSURE.--

A. No firm, partnership, corporation or joint stock association shall be licensed pursuant to the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice surveying in the state except as provided in that act.

B. Professional surveyors may engage in the

practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a partnership, at least one of the partners shall be a professional surveyor pursuant to that act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a joint stock association or corporation, services or work involving the practice of surveying may be offered through the joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation that constitute the practice is a professional surveyor who has authority to bind such joint stock association or corporation by contract; and further provided that all drawings or reports that are involved in such practice, issued by or for the joint stock association or corporation, bear the seal and signature of a

professional surveyor in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice surveying in accordance with the requirements in this section.

D. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:

(1) the minimum terms and conditions of professional liability insurance coverage, including limits and exceptions; or

(2) the absence of professional liability insurance coverage."

Section 14. Section 61-23-27.11 NMSA 1978 (being Laws 1993, Chapter 218, Section 32, as amended) is amended to read:

"61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY ACTIONS--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of licensure, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or

reprimand any professional surveyor who is found by the board to have:

(1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of licensure;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of licensure;

(6) falsely presented himself to be a professional surveyor by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules adopted by the board pursuant to the Engineering and Surveying Practice Act;

(9) been convicted of a felony; or
(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules adopted by the board.

B. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

C. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any licensee. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the professional surveying

committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions of the Uniform Licensing Act by the professional surveying committee, acting for the board, or by the board.

E. Persons making charges shall not be subject to civil or criminal suits, provided the charges are made in good faith and are not frivolous or malicious.

F. The board or any board member may initiate proceedings pursuant to the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a certificate of licensure to any person whose certificate has been revoked or suspended, provided a majority of the members of the professional surveying committee, acting for the board, or of the board votes in favor of reissuance. A new certificate of licensure bearing the original license number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

H. The professional surveying committee shall prepare and adopt rules of professional responsibility for professional surveyors as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every licensee and applicant for licensure pursuant to that act and shall be published in the roster. Such publication and public notice shall be in accordance with the Uniform Licensing Act. The professional surveying committee may revise and amend these rules of professional responsibility for professional surveyors from time to time and shall notify each licensee in writing of the revisions or amendments.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

K. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by

the board. Action shall be brought in the county in which the violation occurs."

Section 15. Section 61-23-31.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 38) is amended to read:

"61-23-31.1. GOOD SAMARITAN.--

A. A professional engineer or professional surveyor who voluntarily, without compensation, at the request of a state or local public official acting in an official capacity, provides aircraft structure, structural, aeronautical, electrical, mechanical, other engineering services or surveying at the scene of a declared national, state or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, flood, collapse or other similar disaster or catastrophic event, such as a terrorist act, shall not be liable for any personal injury, wrongful death, property damage or other loss caused by the engineer's or surveyor's acts, errors or omissions in the performance of any surveying or engineering services for any structure, building, piping or other engineered system, publicly or governmentally owned.

B. The immunity provided shall apply only to a voluntary engineering or surveying service that occurs within thirty days of the emergency, disaster or catastrophic event, unless extended by an executive order issued by the governor under the governor's emergency executive powers. Nothing in

this section shall provide immunity for wanton, willful or intentional misconduct." _____

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